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HOUSE BILL 799

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Roberto J. "Bobby" Gonzales

AN ACT

RELATING TO UTILITIES; CLARIFYING THE SCOPE OF PUBLIC  
REGULATION COMMISSION JURISDICTION OVER GENERATION AND  
TRANSMISSION COOPERATIVES; REQUIRING GENERATION AND  
TRANSMISSION COOPERATIVES TO FILE WITH THE PUBLIC REGULATION  
COMMISSION COST OF SERVICE REPORTS WITH ADVICE NOTICES FILED  
FOR RATE PROPOSALS; PERMITTING MEMBER UTILITIES, IN ACCORDANCE  
WITH EXISTING CONTRACTS, TO GENERATE THEIR OWN POWER OR OBTAIN  
POWER FROM SOURCES OTHER THAN GENERATION AND TRANSMISSION  
COOPERATIVES OF WHICH THEY ARE MEMBERS, WITHOUT PENALTY;  
EXTENDING PROTEST PERIODS FOR RATES PROPOSED BY GENERATION AND  
TRANSMISSION COOPERATIVES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-6-4 NMSA 1978 (being Laws 1941,  
Chapter 84, Section 17, as amended) is amended to read:

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underscoring material = new  
~~[bracketed material]~~ = delete

1 "62-6-4. SUPERVISION AND REGULATION OF UTILITIES.--

2 A. The commission shall have general and exclusive  
3 power and jurisdiction to regulate and supervise every public  
4 utility in respect to its rates and service regulations and in  
5 respect to its securities, all in accordance with the  
6 provisions and subject to the reservations of the Public  
7 Utility Act, and to do all things necessary and convenient in  
8 the exercise of its power and jurisdiction. [~~Nothing in~~] This  
9 section [~~however~~] shall not be deemed to confer upon the  
10 commission power or jurisdiction to regulate or supervise the  
11 rates or service of [~~any~~] a utility owned and operated by [~~any~~]  
12 a municipal corporation either directly or through a  
13 municipally owned corporation or owned and operated by [~~any~~] an  
14 H class county; [~~by~~] a class B county [~~as~~] defined in Section  
15 4-36-8 NMSA 1978; [~~or by~~] a class A county [~~as~~] described by  
16 Section 4-36-10 NMSA 1978 either directly or through a  
17 corporation owned by or under contract with an H class county;  
18 [~~by~~] a class B county [~~as~~] defined in Section 4-36-8 NMSA 1978;  
19 [~~or by~~] a class A county [~~as~~] described by Section 4-36-10 NMSA  
20 1978; or the [~~rates, service~~] securities or class I or class II  
21 transactions of a generation and transmission cooperative.  
22 [~~No~~] Inspection or supervision fees shall not be paid by  
23 generation and transmission cooperatives; [~~or by such~~] those  
24 municipalities or municipally owned corporations; a class B  
25 county [~~as~~] defined in Section 4-36-8 NMSA 1978; a class A

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1 county [~~as~~] described by Section 4-36-10 NMSA 1978; [~~or~~] an H  
2 class [~~counties or such~~] county; a corporation owned by or  
3 under contract with a class B county [~~as~~] defined in Section  
4 4-36-8 NMSA 1978; a class A county [~~as~~] described by Section  
5 4-36-10 NMSA 1978; [~~or~~] an H class county with respect to  
6 operations conducted in a class B county [~~as~~] defined in  
7 Section 4-36-8 NMSA 1978, in a class A county [~~as~~] described by  
8 Section 4-36-10 NMSA 1978 or in H class counties.

9 B. The sale, furnishing or delivery of gas, water  
10 or electricity by [~~any~~] a person to a utility for resale to or  
11 for the public shall be subject to regulation by the commission  
12 but only to the extent necessary to enable the commission to  
13 determine that the cost to the utility of the gas, water or  
14 electricity at the place where the major distribution to the  
15 public begins is reasonable and that the methods of delivery of  
16 the gas, water or electricity are adequate; provided [~~however~~]  
17 that [~~nothing in~~] this subsection shall not be construed to  
18 permit regulation by the commission with respect to [~~a~~  
19 ~~generation and transmission cooperative, except location~~  
20 ~~control pursuant to Section 62-9-3 NMSA 1978 and limited rate~~  
21 ~~regulation to the extent provided in Subsection D of this~~  
22 ~~section, or of~~] the production or sale price at the wellhead of  
23 gas or petroleum.

24 C. The sale, furnishing or delivery of coal,  
25 uranium or other fuels by any affiliated interest to a utility

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1 for the generation of electricity for the public shall be  
2 subject to regulation by the commission but only to the extent  
3 necessary to enable the commission to determine that the cost  
4 to the utility of the coal, uranium or other fuels at the point  
5 of sale is reasonable and that the methods of delivery of the  
6 electricity are adequate; provided ~~[however]~~ that ~~[nothing in]~~  
7 this subsection shall not be construed to permit regulation by  
8 the commission of production or sale price at the wellhead of  
9 gas or petroleum. Nothing in this section shall be construed  
10 to permit regulation by the commission of production or sale  
11 price at the point of production of coal, uranium or other  
12 fuels.

13 D. New Mexico rates proposed by a generation and  
14 transmission cooperative shall be filed with the commission in  
15 the form of an advice notice, a copy of which shall be  
16 simultaneously served on all member utilities. Any member  
17 utility may file a protest of the proposed rates no later than  
18 ~~[twenty days]~~ two months after the generation and transmission  
19 cooperative files the advice notice. If three or more New  
20 Mexico member utilities file protests and the commission  
21 determines there is just cause in at least three of the  
22 protests for reviewing the proposed rates, the commission shall  
23 suspend the rates, conduct a hearing concerning reasonableness  
24 of the proposed rates and establish reasonable rates. Each  
25 protest must contain a clear and concise statement of the

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1 specific grounds upon which the protestant believes the  
2 proposed rates are unreasonable or otherwise unlawful; a brief  
3 description of the protestant's efforts to resolve its  
4 objections directly with the generation and transmission  
5 cooperative; a clear and concise statement of the relief the  
6 protestant seeks from the commission; and a formal resolution  
7 of the board of trustees of the protesting member utility  
8 authorizing the filing of the protest. In order to determine  
9 whether just cause may exist for review, the commission shall  
10 consider whether each protestant has exhausted remedies with  
11 the generation and transmission cooperative or whether the  
12 generation and transmission cooperative has unreasonably  
13 rejected the protestant's objections to the proposed rates. A  
14 member utility shall present its objections to the generation  
15 and transmission cooperative in writing and allow a reasonable  
16 period for the generation and transmission cooperative to  
17 attempt resolution of, or otherwise respond to, those  
18 objections. A period of seven days after receipt of written  
19 objections will be deemed reasonable for the generation and  
20 transmission cooperative to provide a written response to the  
21 member utility, but a written response is not required if such  
22 time period extends beyond [~~twenty days~~] two months after the  
23 date on which the generation and transmission cooperative filed  
24 the advice notice. The generation and transmission cooperative  
25 and its members are expected to make a good faith effort to

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1 resolve the member utility's objections to the proposed rates  
2 during that period of time.

3 E. A generation and transmission cooperative that  
4 files an advice notice pursuant to Subsection D of this section  
5 shall file with the commission a cost of service report in a  
6 form prescribed by the commission.

7 F. A member utility of a generation and  
8 transmission cooperative may generate a percentage of its own  
9 power or obtain a percentage of power from a source other than  
10 the generation and transmission cooperative without penalty by  
11 the generation and transmission cooperative if the generation  
12 or receipt of that power does not violate any contract between  
13 the member utility and the generation and transmission  
14 cooperative.

15 [~~E.~~] G. As used in this section, "generation and  
16 transmission cooperative" means a person with generation or  
17 transmission facilities either organized as a rural electric  
18 cooperative pursuant to Laws 1937, Chapter 100 or the Rural  
19 Electric Cooperative Act or organized in another state and  
20 providing sales of electric power to member cooperatives in  
21 this state."